REMARKS

This response is intended as a full and complete response to the final Office Action mailed January 11, 2007. In the Office Action, the Examiner notes that claims 1-33 are pending of which claims 1-11 and 21-33 are rejected and claims 12-20 are withdrawn from consideration.

In view of the following discussion, Applicants submit that none of the claims now pending in the application are obvious under the provisions of 35 U.S.C. §103.

It is to be understood that Applicants do not acquiesce to the Examiner's characterizations of the art of record or to Applicants' subject matter recited in the pending claims. Further, Applicants are not acquiescing to the Examiner's statements as to the applicability of the art of record to the pending claims by filing the instant response including amendments.

REJECTIONS

35 U.S.C. §103

Claims 1 and 21

The Examiner has rejected claims 1 and 21 under 35 U.S.C. §103(a) as being unpatentable over Balogh US Patent No. 5,493,677, filed June 8, 1994 (hereinafter Balogh) in view of Dudkiewicz US Patent No. 6,651,253 filed November 16, 2001; Provisional November 16, 2000 (hereinafter Dudkiewicz), Applicants respectfully traverse the rejection.

The Applicants respectfully submit that Dudkiewicz is not a proper reference against Applicants application because the Applicants invention has an earlier filing date than that of Dudkiewicz. The Examiner's attention is directed to the fact that Dudkiewicz has a filing date of November 16, 2001, whereas Applicants' application has a filing date of August 3, 2001. As such, Dudkiewicz is not a proper prior art reference against Applicants' invention.

If the Examiner is relying on the Dudkiewicz provisional application (60//249,179) having a filing date of November 16, 2000, then the Examiner is effectively using the Dudkiewicz provisional application as a prior art reference instead of the Dudkiewicz

patent 6,651,253. It should be noted that the Dudkiewicz patent 6,651,253 is not the same reference as the Dudkiewicz provisional application. Since a provisional application may have a different specification from that of a 1.111 application that claims priority to the provisional application, it is respectfully requested that the Examiner provides a copy of the provisional application if the Examiner maintains the present rejection. Furthermore, asserting the Dudkiewicz provisional application as a prior art reference constitutes as a new rejection.

Furthermore, the test under 35 U.S.C. §103 is not whether an improvement or a use set forth in a patent would have been obvious or non-obvious; rather the test is whether the claimed invention, considered as a whole, would have been obvious. Jones v. Hardy, 110 USPQ 1021, 1024 (Fed. Cir. 1984) (emphasis added). Moreover, the invention as a whole is not restricted to the specific subject matter claimed, but also embraces its properties and the problem it solves. In re Wright, 6 USPQ 2d 1959, 1961 (Fed. Cir. 1988) (emphasis added). The Balogh and Dudkiewicz references, alone or in combination, fail to teach or suggest Applicants' invention as a whole.

The Balogh reference teaches generation, archiving, and retrieval of digital images with evoked suggestion-set captions and natural language interface. Digitized images are associated with English language captions and other data, collectively known as the metadata associated with the images. A natural language processing database removes ambiguities from the metadata, and the images and the metadata are stored in databases. A user formulates a search query, and natural language processing is used to determine matches between the query and the stored metadata. Images corresponding to the matches are then viewed, and desired images are selected for licensing. The license terms for selected images are displayed, and a subset of the selected images are ordered as desired by the user.

Balogh, however, fails to teach or suggest each and every limitation of Applicants' invention of at least claim 1. Namely, Balogh fails to teach or suggest at least the limitation of "metadata related to the available aggregated content from the plurality of media sources... wherein the suggestion database processor searches the

suggestion database, based on one or more search request criteria, to produce a list of keywords to be used to suggest content from the plurality of media sources."

Applicants' claim 1 positively recites:

> 1. An apparatus for suggesting available aggregated content from a plurality of media sources in a digital communications network, comprising:
>
> a content metadata crawler that searches metadata related to the available aggregated content from the plurality of media sources and produces a metadata list, wherein the metadata list comprises a plurality of metadata elements, and wherein each metadata element comprises one or more metadata fields;
>
> a suggestion keyword indexer coupled to the content metadata crawler, wherein the suggestion keyword indexer receives the metadata list and indexes the metadata elements;
>
> a suggestion database coupled to the suggestion keyword indexer that stores the indexed metadata elements; and
>
> a suggestion database processor coupled to the content metadata crawler, the suggestion keyword indexer and the suggestion keyword database, wherein the suggestion database processor searches the suggestion database, based on one or more search request criteria, to produce a list of keywords to be used to suggest content from the plurality of media sources.

Specifically, Balogh does not teach suggest searching from numerous sources of content such as video, television, radio, audio, multimedia, computer software and electronic books. As disclosed on page 14, line 30 to page 15, line 20 of the present application, the present invention provides searching for content containing criteria entered by a system user. A content search suggestion engine 304, in conjunction with the search engine server 350 will be able to suggest content to the user that is related in various ways, such as by category or theme. For example, if a user wishes to see programs about Titanic, the content search suggestion engine 304 may, in addition to suggesting programs about Titanic, suggest or inform the user of programs and other content such as electronic books about ships other than Titanic. Likewise, if the search criteria include Johnny Weismuller, an actor who starred in Tarzan movies, the content search suggestion engine 304 might suggest programs and other content about Tarzan featuring someone other than Johnny Weismuller. Furthermore, the content search suggestion engine 304 may suggest programs for viewing based on past search criteria

entered by the user as well as information on content the user has actually downloaded. For example, if the search criteria includes Johnny Weismuller and the user has searched and/or downloaded numerous sports-related programming in the past, the content search suggestion engine 304 may suggest programming and other content including swimming competitions and sports history and biography programming as well as Tarzan movies and other content directly related to Johnny Weismuller such as the Jungle Patrol television series. If the user searched for and received Tarzan movies, the programming search suggestion engine 304 might suggest electronic books by Edgar Rice Burroughs. Such electronic books could then be downloaded to the user terminal 202 using the wide area network/Intranet 205 bypassing the aggregator 201, or could be compiled at the aggregator 201 for delivery to the user terminal 202.

The Dudkiewicz reference fails to bridge the substantial gap between the Balogh reference and Applicants' invention because the Dudkiewicz patent 6,651,253 is not a proper reference against the Applicants' invention. Moreover, if the Examiner is relying on the Dudkiewicz provisional application, the Applicants respectfully request that the Examiner provide a copy of the provisional application if the Examiner maintains the present rejection. Therefore, Balogh fails to teach or suggest Applicants' invention of at least claim 1 as a whole.

As such, Applicants submit that independent claim 1 is not obvious and fully satisfies the requirements of 35 U.S.C. §103 and is patentable thereunder. Independent claim 21 recites relevant limitations similar to those recited in independent claim 1 and, for at least the same reasons discussed above, independent claim 21 also satisfies the requirements of 35 U.S.C. §103 and is patentable thereunder.

Therefore, Applicants respectfully request that the Examiner's rejection be withdrawn.

Claims 2-3, 5-11, 22-23, and 26-33

The Examiner has rejected claims 2-3, 5-11, 22-23, and 26-33 under 35 U.S.C. §103(a) as being unpatentable over Balogh in view of Dudkiewicz, as applied to claim 1

above, and further in view of Cappi US Patent Application No. 20020038308 filed May 27, 1999 (hereinafter Cappi). Applicants respectfully traverse the rejection.

Claims 2-3, 5-11, 22-23, and 26-33 depend directly or indirectly from independent claims 1 and 21 and recite additional limitations therefor. Since the rejection of the corresponding independent claims under 35 U.S.C. §103 has been overcome, as described hereinabove, and there is no argument set forth by the Office Action that any other additional references supply that which is missing from Balogh to render the independent claims unpatentable, these grounds of rejection cannot be maintained. Accordingly, these dependent claims also are non-obvious and fully satisfy the requirements of 35 U.S.C. §103 and are patentable thereunder.

Therefore, Applicants respectfully request that the Examiner's rejection be withdrawn.

Claims 4, 24, and 25

The Examiner has rejected claims 4, 24, and 25 under 35 U.S.C. §103(a) as being unpatentable over Balogh in view of Dudkiewicz and further in view of Cappi and further in view of Karaali US Patent No. 6,182,028 filed November 7, 1997 (hereinafter "Karaali"). Applicants respectfully traverse the rejection.

Claims 4, 24, and 25 depend directly or indirectly from independent claims 1 and 21 and recite additional limitations therefor. Since the rejection of the corresponding independent claims under 35 U.S.C. §103 has been overcome, as described hereinabove, and there is no argument set forth by the Office Action that any other additional references supply that which is missing from Balogh to render the independent claims unpatentable, these grounds of rejection cannot be maintained. Accordingly, these dependent claims also are non-obvious and fully satisfy the requirements of 35 U.S.C. §103 and are patentable thereunder.

Therefore, Applicants respectfully request that the Examiner's rejection be withdrawn.

CONCLUSION

Applicants believe all the claims are presently in condition for allowance. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly solicited.

If, however, the Examiner believes that there are any unresolved issues requiring the issuance of an adverse final action in any of the claims now pending in the application, it is requested that the Examiner telephone Eamon J. Wall or Jimmy Kim at (732) 530-9404, so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,

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